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Position Paper (By) Hon. H.E. Strom, Pre
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The Honourable Harry E. Strom
Premier of Alberta

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Honourable Harry E. Strom

Premier of Alberta

September, 1970

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THE CONSTITUTIONAL REVIEW PROCESS



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LEGITIMATE DOUBTS

Constitutional discussions have now been underway for two and a half years. Together we have examined a number of important questions which had previously been either softpeddled or ignored completely. We have attempted to come to grips with the fundamental differences; to confront our mutual problems face-to-face and to resolve those which had in the past proven intractable.

The process of Constitutional review has now become more or less institutionalized. First Ministers meet once or twice a year, discuss several agenda items and depart for their respective capitals without resolving any outstanding problems. Meanwhile, doubts are raised, both in private and public, as to how successful these conferences are.

These doubts appear to be legitimate. None of the problems we addressed ourselves to initially have been disposed of to the satisfaction of those concerned. The time has now come, as the Prime Minister suggests, to ". . . review our objectives, methods and timetables to see if we all have the same view of the extent to which Constitutional change is required, of the urgency of the task, and of the best way to proceed toward the completion of the work".

POLITICAL AND SOCIAL REALITIES

It is abundantly clear that not all of the participants in the Constitutional review process started the journey with the same objectives in mind or with the same enthusiasm. Presumably we began on the assumption there is something wrong with the Constitution we now have but there is yet to be put forward a systematic catalogue of the inadequacies of the present Constitution or how a new Constitution will overcome them. Orderliness and certainty could result from a new document encompassing the complex statutes, judicial decisions and the conventions which made up our present Constitution, assuming the required level of agreement could be reached for forging such a document. Our experience over forty years in the search for an amending formula does not make this a bright prospect. There are those who believe that since the British North America Act is over a hundred years old, it, ipso facto, must be out of date and needs to be replaced. One could also argue, perhaps, that our present Constitution should be replaced because it fails to reflect the political and social realities of the country; that it does not adequately recognize the bicultural nature of Canada or Canada's

position as a nation in the world and that it lacks an amending formula. On the other hand it also could be argued that these are deficiencies which are best treated on an individual basis by making necessary adjustments to our present Constitution.

OPTIMISTIC START

It is our view that the Provincial Premiers met in Toronto in 1967 because of the perceived crisis which Quebec posed to the Canadian Confederation at that time. This fact also was recognized by Prime Minister Trudeau at the Second Meeting of the Constitutional Conference when he said:

The reasons which had motivated our decision to revise the Constitution stemmed to a great extent, from the dissatisfaction of French-Canadians and their uneasiness within the Canadian federation.

But even at this point there was no agreement on the danger to the Confederation posed by Quebec's dissatisfaction. Some premiers dismissed talk of Constitutional

problems and insisted the conference concentrate on economic issues. If there was unanimity on anything it was that there was something wrong with our federal system but there was a wide divergence on precisely what was wrong and the remedies required. Despite our inability to agree on what the principal problem was, Alberta added its voice to those of the other provinces in expressing high expectation for the assault on Constitutional issues by way of the national conference. But while expressing optimism, Alberta foresaw difficulties and sounded a note of warning; we suggested that many of the differences between the component parts of the union

. . . can be resolved without attempting to resolve them by constitutional amendments, which seem to have a very bad habit of bogging down and never reaching finality.

SUBSTANTIVE AND PROCEDURAL PROBLEMS

The Government of Alberta is growing concerned with what we consider to be fundamental problems involving both the substantive and procedural aspects of Constitutional change. Our differing perceptions of our roles in the federal

system and of federalism itself, brought us to the conference table initially and while we now see more clearly the substance and the merit of each other's position on various issues, we have not as yet delimited the scope of the review, nor has there been final agreement on any of the areas selected for discussion at the First Meeting.

The crisis atmosphere of 1967 is no longer as evident and one could argue that the pressure for a new Constitution has also diminished. Is it because the heat has gone out of the issue? Does this indicate that new Constitutions are obtainable only in the midst of political uncertainty? As long as reducing unemployment and financial and political stability remain at the top of the Quebec government's list of priorities will there be no immediate demand for a new Constitution?

RESPONSES AND REACTIONS

Does this mean that the objectives of Constitutional review are dependent on the issues existing at the time Canada's leaders happen to meet? That this would appear to be the case

is supported by the efforts of some provinces to head the second conference in the direction of fiscal matters. But if this observation is correct then there is the prospect of our objectives changing from national issue to national issue and the danger exists of a never-ending Constitutional Conference. In other words, it is arguable that at any moment in time our goals may really be only an accumulation of responses and reactions to short-term or immediate problems which lack a sense of direction -- a comprehensive design necessary to the achievement of meaningful Constitutional reform.

The first Constitutional Conference held in February 1968 was called for the primary purpose of discussing a proposed Bill of Rights and the first report of the Bilingualism and Biculturalism Commission. It ended with "agreement" to undertake a review of the Constitution. One year later it was made clear by the report of the Continuing Committee of Officials that not all of the participants in the February 1968 Conference had received the same message. The report points out:

The members of the committee did not all have from the outset the same understanding of the nature of the review which was implied by the conclusions of the February (1968) conference. Some believed that the first ministers had in mind a very broad and fundamental review, embracing all aspects of Canadian life which could be affected in any way by the Constitution, written and un-written. Others were of the view that the scope of the review which had been envisaged was much more limited, involving perhaps an examination of the British North America Act with a view to considering suggested amendments thereto.

SCOPE AND OBJECTIVES

For the purpose of its program of work the Committee proceeded on the basis of a "total review" but it was clear from its report that when the Committee began the task of deciding the meaning of the various discussion areas selected by the First Ministers there was little area of substantive agreement on the scope of the review itself, the objectives of Confederation, language rights, distribution of powers and the kind of government Canada should have in the future. The point is that there exists -- and, it appears, always has existed -- a dilemma over what the end result of the Constitutional discussions should be. If

there is no consensus on the objectives and scope of Constitutional review, how can every government be proceeding on the basis of a "total review" -- leaving aside whatever that term may mean. If, on the other hand, it means what the federal government seems to indicate it means, i.e. ". . . a general and comprehensive review, commencing with the objectives and principles of the Constitution and proceeding systematically through all its other aspects" -- then it could be a decade or more before such an immensely complicated and difficult process of revision is completed. The Secretariat's most recent enumeration of possible subjects for discussion indicates as much.

OUR APPROACH

Part of the difficulty we currently face may stem from the means we have chosen to effect Constitutional reform and our approach to the subject. Two problems in this regard should be mentioned. First, as is clear from proceedings of the Second Conference, we have chosen to make this review of the Constitution all-encompassing.

Second, we have, at the federal government's behest, at least tacitly accepted the proposition that the entire range of Constitutional issues should be discussed before agreement is sought on specific subjects. For example, at the December 1969 conference the Maritime Provinces suggested that some conclusions be drawn or proposals made with respect to regional disparities but the federal government apparently argued, in effect, that no decisions would be made until everything had been discussed. We have, then, opted to seek a general consensus in the hope that such a consensus will enable us to resolve our differences on specific subjects without having to raise questions about the broader implications of each item when detailed bargaining takes place.

"BREAD AND BUTTER" ISSUES

While the all-encompassing approach presents an opportunity for the introduction of a diversity of interests into the discussions, it has also resulted in a great deal of time being spent on issues which could be much more amenable to resolution outside the Constitutional arena.

These immediate concerns -- what some have described as the "bread and butter" issues -- tend to obscure the broader issues, such that discussions have become mired in day-to-day matters while the fundamental Constitutional problems go untended. We do not depreciate the importance of these matters nor do we deny that in many cases they relate to the division of powers but they are political issues which have a tendency to confuse and divert the Constitutional Conference from the principles of the Constitution. How can the Western Premiers fail to attempt to introduce the subject of freight rates, of wheat marketing and the national oil policy -- issues which vitally concern them and their citizens now -- today? How can the Atlantic Premiers resist talking about regional disparities no matter what the agenda? The Prime Minister of Quebec must remain alert to the provincial political situation and Ontario spent a great deal of time initially talking about Medicare. Are these the perspectives which need to be brought to a conference which is charged with the responsibility of reviewing a Constitution and perhaps coming up with a new or amended document which hopefully will be in existence 100 years from now? When the future is tempered by what happens today and when today the eleven governments can not agree on something as

basic as an amending formula, are we really going about the business of Constitution making in the right way?

We must also consider the timetable we have set for the review process. In fact there is no timetable. The February 1969 Conference agreed on an "accelerated" review but just how this was to be accomplished was not discussed. The question is: Are Constitutions written by First Ministers, over a long period of time, with no fixed timetable and no consensus on goals?

DISTINCTIONS: CONSTITUTIONAL AND DAY-TO-DAY

Alberta has argued, in its position paper, The Process of Constitutional Review, presented to the Continuing Committee of Officials meeting in Banff and circulated to all First Ministers, that a greater effort should be made to distinguish between the on-going problems of federalism, which are properly the subject of Constitutional discussions, and the day-to-day problems of federalism, which impinge upon but are not necessarily Constitutional subjects in themselves. We have pointed out that many of the problems and issues raised during the course of these

discussions could more appropriately be dealt with outside the Constitutional arena, through the existing -- or, ideally, elaborated and rationalized -- structures of federal-provincial relations. If we can succeed in separating the Constitutional problems and the Constitutional aspects of the day-to-day problems from the day-to-day problems themselves, we believe it should be possible to proceed more quickly with the process of Constitutional reform. Moreover, although we did not explicitly indicate so, we assumed that an effective separation between these two sets of problems would enhance the prospects that:

- (a) the Constitutional discussions would produce some minimal measure of agreement on certain issues;
- (b) neither the Constitutional nor the day-to-day problems would be ignored at the expense of one another; and
- (c) a more systematic approach to both sets of problems could be pursued.

STRIKING BALANCES

We recognized the difficulty of isolating the substantive Constitutional problems and the Constitutional

aspects of the day-to-day problems. Notwithstanding this difficulty, every effort should be made to dichotomize between these two kinds of issues, for it is only by extracting general principles from the British North America Act and the day-to-day problems which we experience that we will be able to establish a Constitutional framework capable of serving our needs for the future. Our task is to strike the right balance within the federal system between several conflicting values. For example, we want sufficient flexibility in the Constitution to accommodate change, yet sufficient rigidity to ensure that changes do not destroy the system -- either because they were ill-conceived or hastily implemented. We want to ensure that the division of powers and fiscal resources are in balance. Care also must be taken to ensure that no single geo-political unit dominates the federation. Finally, the balance we strike must encourage and facilitate the type of self-expression to which a substantial measure of local autonomy gives rise.

It would be naive to suggest that Constitutional discussions could take place in isolation from the day-to-day problems of Canada. It is the continuing problems, some of which are of a durable nature, which in part made the present

review necessary. On the other hand, it would be equally foolish to attempt to revise or rewrite the Constitution solely on the basis of providing solutions for the contemporary problems. Such a Constitution would be obsolete the moment circumstances changed or new problems confronted the polity. What we are arguing, then, is that we must continually strive to keep this distinction in mind when we address Constitutional issues and apply it as vigorously as possible.

Our advocacy of the necessity of drawing distinctions between Constitutional and day-to-day problems and its corollary -- the desirability of seeking solutions to the day-to-day problems outside the Constitutional arena -- have caused a certain amount of consternation among those who do not share our disillusionment with the lack of progress the Constitutional discussions have made so far. It has been argued, for example, that Constitutional discussions have not inhibited governments from seeking the resolution of day-to-day problems. While this is partly correct, the converse is clearly not the case: concern with day-to-day problems, has, on our view, inhibited and even retarded progress in the Constitutional arena. The former statement is

only partly correct, for while the central government may not be neglecting such pressing problems as wheat and oil marketing, pollution control and environmental management and inflation and unemployment, its efforts are not as effective as they might be because the full co-operation of the regional governments has not been secured, partly because provincial energies are being dissipated in the Constitutional arena.

BARGAINING POSITIONS

When we suggested that the day-to-day problems might more appropriately be dealt with outside the Constitutional arena, it was and is our conviction that the type of collective effort required to resolve these problems could not be secured within the Constitutional arena, where each government is primarily concerned with protecting its stake in Confederation and making certain that any agreement which is achieved does not contain elements which might deleteriously affect its bargaining position in relation to other issues. For example, if agreement was reached with respect to some aspect of environmental management, each government would be concerned about the possible

implications of the agreement vis-a-vis the division of powers. Each government would have to ask: Does this agreement or any part of it commit me in other areas? Does this agreement limit my future options? On the other hand, if the agreement was achieved outside the Constitutional arena, through the normal channels of federal-provincial relations, the question of far-reaching Constitutional implications would not be as relevant, particularly if the various governments agreed beforehand that whatever collaborative arrangement was worked out would not commit them vis-a-vis Constitutional implications.

VISIBLE AND CONCRETE PROGRESS

On the question of our approach to Constitutional review, our position is somewhat ambivalent. While we recognize the value of comprehensive discussion we are not convinced prolonged debate will, on balance, prove more advantageous than a more direct approach. The possibility that protracted discussion, without visible or concrete progress, will lead to a diminution of the enthusiasm which has characterized past conferences must be faced. As the Premier of Prince Edward Island said

at the Third Meeting, after urging that some conclusions be drawn, "Nothing would please me more than to return home able to report to my constituents that we had reached a decision of significance during this Conference." We need to consider whether the Federal Government's insistence on holding everything in abeyance until the document can be developed in toto is a wise practice. Without the enthusiastic support of the eleven governments, which has provided the impetus for Constitutional reform, the probability that negotiations on the specific terms of Constitutional changes will produce agreement is remote.

LEADERSHIP CHANGES

Two other related problems, both involving those who participate in these discussions, should be mentioned. First, since Constitutional review began in 1968, a number of changes in leadership have occurred. It is difficult to determine what effect these changes have had on the process of review; however, it is reasonable to assume that a change in First Ministers necessitates a period of review, an examination of his predecessor's position, and possibly, a re-orientation of that province's approach to

the Constitutional problems confronting Canada. A perusal of the proceedings to date makes it clear, and logically so, that not all Canadians see the country's problems from the same perspective. It is, therefore, only natural that every change in First Ministers or governments is going to -- to a greater or lesser degree -- have an arresting effect on the total process of Constitutional review. If the process of writing a new Constitution is to be drawn out over several years how will it be possible to achieve continuity and consensus when the participants are constantly changing? What will happen to the Constitutional talks if the leading figures do not remain at centre stage? If, as has been suggested in some quarters, we are facing the prospect of a decade of review this is more than just a hypothetical question.

ADMINISTRATIVE PROBLEMS

The second problem is that many of the individuals at the official level, who are involved in the day-to-day decisions relating to the administrative aspects of federalism, are also involved in the discussions on reform. Their attitudes and ideas on reform are, of course, influenced by their

administrative activities and consequently, they cannot avoid bringing these conditions into the Constitutional arena. The question which arises is: To what extent should administrative problems influence the outcome of Constitutional discussions? Any changes which come about as a result of our negotiations must meet the test of being politically acceptable rather than administratively feasible. While we do not want to belittle the importance of administrative problems, it seems reasonable to assume a revised Constitution would be sufficiently general to provide for the flexibility necessary to permit governments to resolve both the policy and administrative difficulties which may arise.

MAIN OBJECTIVES

The problems we have outlined are important, and we must come to grips with them before these discussions go much further. But immediately, it is the more fundamental questions which must be confronted. Of prior importance is, of course, the question of goals. What do we expect to accomplish? What is the purpose of review? What changes are necessary and desirable? The formal review of the

Constitution was launched with the expectation that major revisions would be undertaken; that new Constitutional agreements would be worked out which more accurately reflected the social, economic and political diversity in Canada. Yet more than two years have passed since the review began and we do not appear to be appreciably closer to the realization of our aspirations. True, we have reached what might be described as general agreement on the objectives of Confederation. Prime Minister Trudeau, in The Constitution and the People of Canada, outlined four main objectives:

1. To establish for Canada a federal system of government based on democratic principles.
2. To protect basic human rights, which shall include linguistic rights.
3. To promote natural economic, social and cultural development and the general welfare and equality of opportunity for all Canadians in whatever region they may live, including the opportunity for gainful work, for just conditions of employment, for an adequate standard of living, for security, for education, and for rest and leisure.
4. To contribute to the achievement of world peace and security, social progress and better standards of life for all mankind.

READY SOLUTIONS

These objectives or goals are certainly well worth pursuing, but their achievement is a different matter. First, leaving aside normative values, it is difficult, and in some cases, virtually impossible to translate general statements such as these into concrete policies and programs. Second, assuming agreement can be reached on the import of each of these statements, it is unlikely each government would attach the same importance or priority to the various problems. Thus, a policy which, for example, proposed the elimination of regional disparities may have widely different consequences from one part of the country to another. Third, the more general problem is that any change which is brought about will be, for the most part, determined by the ambitions, anxieties and attitudes of governments which have become conditioned to operating with certain powers and within certain limits. Constitutions are not made or unmade in a vacuum. To expect ready solutions to the grave problems facing this country, simply by convening a Constitutional Conference, is to ignore the realities of the situation.

Whatever broad agreement we may have reached on the general objectives of Confederation, and in particular on Constitutional reform, then, may not be extremely useful when the time comes to sit down at the bargaining table and negotiate the terms of agreement of specific proposals. As Alberta indicated at the Confederation of Tomorrow Conference in 1967:

. . . when you have major problems, if you can break these down and resolve them one by one . . . your chances of success are substantially greater than they are if you lump them together as one problem and attempt to resolve them by rewriting the whole Constitution.

THE PAST, PRESENT AND FUTURE

We should be aware of several other considerations which must underlie our search for solutions to the Constitutional problems which confront us. If it is our intention to restructure the Constitutional framework, then it is incumbent upon us to ensure that the fruits of our labours reflect, as well as present day reality, the past and the future. The past has taught us that the Constitution must be sufficiently general to accommodate changing conditions

yet sufficiently specific to avoid jurisdictional disputes which could lead to impasse. At the same time, with a view to the future, the Constitution must provide sufficient flexibility to facilitate adjustments in the relationship between the two orders of government, for the Constitution is no more and no less than an expression of the dynamic society which gives it substance.

AN EQUILIBRIUM

The Constitution itself is not a panacea, and Constitutional change will not eliminate our problems. The Constitution -- as a complex fabric of statutes, conventions, usages and court decisions -- provides the structure within which the federal system of government functions. It is vital, therefore, that we recognize the interdependence, the structural-functional interaction which takes place between the various parts of the system. If we ignore these realities, and proceed with wholesale revisions to the Constitution, we run the risk of upsetting the delicate equilibrium which characterizes the relationship between the two orders of government. Moreover, given the differing perceptions of federalism, and the conflicting views the various

governments have in a number of areas, it is difficult if not impossible to envisage the achievement of a consensus on fundamental issues. As one observer suggests, the cleavages have run along the following dimensions:

1. Attitudes relating to a strong versus a weak central government.
2. "Have" versus "have not" provinces.
3. Regional versus national goals.
4. Importance attached to the review.
5. Fundamental versus expedient or ad hoc changes.

The question arises: Are these positions reconcilable? Or, more importantly, does the process of Constitutional reform, injected with a sense of urgency, and the expectation of significant accomplishments, offer an acceptable means of sorting out and resolving these incongruencies? It is of the utmost importance that we appreciate we are not dealing with ephemeral or transitory circumstances; the inequalities among the various governments, in terms of size, population, wealth, resources and economic potential, are of a durable nature. These are not the type of differences which can be resolved quickly, and they are certainly not the type which will disappear through Constitutional reform.

Despite the difficulties and questions which we have raised there is no disputing the importance to Canadian federalism of the issues discussed at Constitutional conferences. The division of powers, spending and taxing powers, regional disparities, official languages and fundamental rights are important. But do we need a new Constitution to remedy problems which exist in these areas? Or is this a way of avoiding the major issues which do affect the people of Canada? Moreover, since problems associated with these subjects are going to be with us whether we draft a new Constitution or not it is necessary to ask whether their resolution is best handled by us in the manner we now call the Constitutional Conference. These are the processes of adjustment of governmental powers which do not respond to the slow process of Constitutional review. That procedures must be designed to accommodate such adjustments can not be denied but that does not necessarily imply a new Constitution.

FLEXIBILITY

Is the existing Constitution unresponsive to national needs? Is it inflexible? Is it capable of

accommodating change? The answers are found in the Canadian experience. We have under the existing framework adjusted to and met the demands of two world wars and several economic depressions as well as adjusting to the bicultural nature of Canada. Our Constitution has proved sufficiently flexible to permit centralization of power during wartime while accommodating the decentralizing trends of the past decade. Professor Donald Smiley has written, "In its legal-constitutional, political and administrative dimensions Canadian federalism has since 1867 demonstrated great resources of adaptability."

This is not to suggest that there are not critical limits beyond which no Constitution can be stretched or that a situation could not arise which our Constitution could not accommodate. But we have not reached any such outer limit and should that occasion ever arise we could no doubt either draft a new Constitution or adapt to the crises as we have done in the past.

Critics of the existing Constitution tend to underestimate the extent of Constitutional change in Canada since Confederation -- and the capacity of our system to

adjust to these changes. Appeals to the Privy Council have been abolished in favour of the Supreme Court of Canada. There has been effective discontinuance of the disallowance power. The British North America Act has been amended to allow large portions of the Act to be changed by the federal parliament alone. There are vast new areas of jurisdiction never dreamed of in 1867 now undertaken by both orders of government. The flexibility and viability of the present Constitution can not be disputed.

Is it too flexible? Flexibility must inevitably involve a certain degree of uncertainty and man, according to some authorities, has a psychological need for certainty. But if there is an element of too much flexibility in our Constitution can it be shown that any uncertainty which results is more than a state of mind and has in fact impeded the country's progress? Does the flexibility and adaptability of the Constitution and its consequent capacity to accommodate change in a world where the only thing that is certain is that nothing is certain far outweigh any element of uncertainty resulting from a too flexible Constitution? We must not forget what Prime Minister Pearson

pointed out in Federalism for the Future:

We are today aware of defects: we must not let them blind us to the existence of virtues, nor must we let them cause us to believe that any change will be an improvement. If a mistake is made in an ordinary statute, it can be remedied at a subsequent session of Parliament or the legislature. But a Constitutional error may be almost irremediable and the consequences serious in the extreme. The fundamental law is indeed fundamental, and its examination and review must be so treated.

The Government of Alberta also echoes Prime Minister Trudeau's words in The Constitution and the People of Canada: "Complete clarity of detail, making provision for every eventuality, would destroy the vitality and resilience so characteristic of our existing Constitution."

It is also worth remembering Prime Minister Trudeau's conclusion after an examination of the British North America Act and the Constitutional conventions which have evolved to give our governmental institutions their present form:

[The BNA Act and the Constitutional conventions] have in the main helped Canadians to preserve their freedom, to control their governments, and to achieve the level of progress they enjoy today.

What is at the root of the meetings we now call the Constitutional Conference? What are we really attempting to do? Surely the question which we are really attempting to resolve is: How do we most effectively bring about change in the Canadian federal system?

ACCOMMODATION OF CHANGE

There are, of course, a number of ways we can effectively accommodate change. One is the ad hoc approach. Another is an amending formula. Alberta has already suggested a third possibility, to elaborate and rationalize the mechanisms of intergovernmental relations, an alternative which follows from acceptance of the desirability of dealing simultaneously with Constitutional and day-to-day problems in a more systematic way. In this regard, it was argued that the ad hoc approach to the types of problems which fall within the ambit of the traditional federal-provincial relations structures has been the most successful. This does not mean, however, that difficulties do not remain. From a provincial standpoint, our success has been far less than what we consider desirable: we have not, for example, obtained adequate prior consultation with respect to federal

initiatives, the type of consultation envisaged in the federal paper on the Spending Power. Nor have we achieved an effective voice in the federal decision-making process. And finally, we agree with Edgar Gallant who, in his article "The Machinery of Federal-Provincial Relations", points out ". . . that the position taken by the representative of one government at one federal-provincial meeting may not be wholly consistent with the position taken by another representative of the same government on a related question at another meeting." The multiplicity of formal and informal contacts between the two orders of government make it impossible for provincial administrations to be fully aware of all the decisions which are being taken.

MACHINERY OF FEDERAL-PROVINCIAL RELATIONS

When we suggested more attention ought to be paid to the machinery of federal-provincial relations, then, it was our contention that improvements in this area would encourage and facilitate the type of collaboration and co-operation necessary to meet the challenges posed by the various problems we were attempting to come to

grips with in the Constitutional arena. We recognize the danger of over-structuring federal-provincial relations and the possibility of eliminating the flexibility the current ad hoc approach provides. Nevertheless, we believe that if we are to realize the maximum benefit from federal-provincial collaboration, it will be necessary to structure and rationalize the machinery we have to work with. As we indicated earlier, we believe this can best be achieved by creating internal structures which perform a co-ordinative function and avoid the very real problems that the alternative, a joint federal-provincial agency, presents with respect to responsibility and accountability. With an internal agency, each government can tailor its organization and structure to suit its own requirements, having regard for its particular obligations.

UNDERLYING PROBLEMS

Professor Smiley defines co-operative federalism as a "series of pragmatic and piecemeal responses by the federal and provincial governments to the circumstances of their mutual interdependence." A very large volume of public policy has resulted from these collaborative

procedures. Of course one can argue, as did the Prime Minister in response to provincial requests that the February 1969 Conference concentrate on day-to-day social and economic problems, that

. . . there comes a time when the search for short-term solutions, the reliance upon temporary adjustments, must not be allowed to stand in the way of an examination of the underlying problems.

Alberta's reply to this is let us by all means examine the underlying problems. Let us examine the fundamental problems surrounding Canadian unity and federal-provincial co-operation. But let us do it in a forum in which we can expect a reasonable degree of success. Let us do it on the basis of objectives which are attainable. Let us do it using methods which have proven successful in the past. The Government of Alberta is convinced this is not by way of the Constitutional Conference as it has developed to this point.

CO-OPERATIVE FEDERALISM

Federal-provincial collaboration outside of the

Constitutional arena allows the participants to search for agreement where it can be found. Federal-provincial conferences at all levels are usually faced with the task of reaching agreement or seeking mutually acceptable solutions to specific proposals. The Constitutional Conference, on the other hand, ostensibly seeks agreement on the principles of the Constitution but has even failed to come to grips with these. At the same time, Constitutional discussions have been flirting with specific issues such as freight rates and wheat marketing which should be dealt with by an ordinary federal-provincial conference. Moreover, even if the First Ministers did get down to serious discussion of Constitutional abstractions or consider ways to deal with hypothetical situations which may arise in the future it would require simultaneous federal-provincial agreement on a very wide range of basic political issues to reach any definite agreement. In view of our failure to come to agreement on matters which confront us now it seems unlikely that we could reach the unanimity required for significant Constitutional changes. We must also consider the effect attempts to draft a new or revised Constitution might have on our present device of making changes through federal-provincial collaboration. Dealing

with economic policy one observer has noted:

. . . the Constitution as it now stands has helped to narrow the areas of conflict. To attempt, in present circumstances, a full revision or redrafting of the Constitution means really that the whole front will be ablaze; any rational solution to urgent problems of economic policies might have to be postponed for a long time. It would seem much more fruitful to find first an empirical equilibrium between the governments and then draft it into a legal text.

ALBERTA'S POSITION

The position taken by the Government of Alberta, then, is this: We should concentrate on bringing about changes in our federal system and the necessary adjustments in governmental powers through the procedures and institutions of intergovernmental liaison which have proved successful to this point. Such changes may very well involve revisions of the Constitution and should the eleven governments reach the required level of agreement for Constitutional change or should we agree on a formula for amendment of the Constitution so that we can bring about such change then we can proceed with pragmatic and piecemeal

Constitutional revision. It is our belief that co-operative federalism is the means by which we can best attain our objectives and aspirations and by which we can chart the most logical and practical course to Constitutional change.

INTERGOVERNMENTAL LIAISON

Intergovernmental liaison in its various forms is a natural reaction and response to the growing interdependence of governments in Canada. Today there is an inventory of some 170 federal-provincial committees. The machinery of liaison is of a wide variety, from the formal ministerial institutions to the informal processes of daily administration. Edgar Gallant in "The Machinery of Federal-Provincial Relations" provides a useful system of classification of this machinery which may aid in the analysis of the current situation and provide some insight into the growth, complexity and future demands.

1. Federal-Provincial Committees. Composed of ministers or officials from the federal and provincial governments to discuss matters of mutual interest. This provides

the more formal part of the structure of our inter-governmental relationships. There are approximately 100 such committees including sub-committees -- such as the Plenary Conference of Prime Ministers and Premiers, Conference of Ministers of Welfare, the Continuing Committee of Economic and Fiscal Matters and the Meeting of Education Ministers.

2. Federal Advisory Councils. These bodies act in support of federal ministers but do in effect function as federal-provincial committees to a large extent. The councils are representative of all governments of Canada, deliberate on matters with the benefit of the provincial points of view with recommendations to the federal minister. Examples of these advisory councils include the Dominion Council of Health, the National Advisory Council on Rehabilitation of Disabled Persons and the National Council of Welfare. The representation on these councils makes them instrumental in facilitating the development of federal-provincial policy.
3. Quasi-independent Associations. Made up of ministers and/or officials they function to some extent as professional organizations or special interest groups. They do not function as representatives from governments but since they do bring people together in a particular field from all governments they serve as a vehicle for federal-provincial consultation and co-ordination. Examples are the Canadian Council of Resource Ministers, the Canadian Association of Administrators of Labour Legislation and the Association of Canadian Fire Marshalls.

4. Inter-provincial Committees. This is a very significant development in inter-government liaison. Indications are that about 60 formally constituted inter-provincial bodies exist. They may convene for matters of purely regional concern or perhaps for agreeing on a joint approach to the federal government. Examples are the Provincial Ministers of Mines Conference, Conference of Provincial Deputy Ministers of Public Works and the Prairie Economic Council.
5. Provincial Advisory Committees. These are provincial committees with federal representation created to advise on matters relating to federal-provincial programs such as the Co-ordinating Committees on Indian Affairs and the ARDA Joint Advisory Committees.
6. Sub-committees. These are bodies with a direct reporting relationship to some other committee. They are usually at a technical level with terms of reference requiring them to give attention to a specific problem area. The Dominion Council of Health has several such committees reporting to it.
7. Non-government Associations. These are organizations which are independent of government but which play an important role in the inter-governmental process. Such associations as the Canadian Good Roads Association with a substantial number of members representing governments and interested in subjects relating directly to some area of government activity. When the membership comes together it is inevitable that proposals will be made, thinking influenced and policy eventually affected.

Given the existence of this machinery which will not disappear under a new Constitution but which could very well be added to, is it not possible to discuss many of the issues within the already-established structures? If Constitutional questions arise, as indeed they will, then let us discuss them at the appropriate level. If a specific meeting of First Ministers is required let it be convened. This solution appears the most desirable if there is no overall plan for the more general review.

THE AD HOC APPROACH

The experiences of the past few years have taught us that specific solutions as responses to specific problems, or the ad hoc approach, has been our most successful solution to the problems of Canadian federalism. A very large volume of public policy has resulted from this technique and by contrast, the comprehensive approach holds out little promise, particularly when it is applied to the division of powers. It is therefore Alberta's view that we must turn our attention to the institutions and procedures of co-operative federalism, to the machinery of inter-governmental liaison, to rationalize

federal-provincial relations in the light of new perspectives gained as a result of our experience with the process of Constitutional review. It is the responsibility of government in Canada not only to respond effectively to new demands but also to develop procedures and institutions of inter-governmental collaboration to deal effectively with the circumstances of the interdependence of the two orders of government.

CONSULTATIVE FEDERALISM

We view the discussions held to date as valuable exercises in consultative federalism. We have benefitted from the mutual exchange of views on such important matters as the distribution of powers, the spending and taxing powers, regional disparities, income security and social services, official languages and fundamental rights. Yet it seems to us that after examining most of the areas we initially agreed should be studied we are no closer to consensus on any of them than when we started the exercise, as the progress report of the Secretariat indicates. If this is indicative of what we can expect to achieve, the prognosis for significant accomplishments in the near

future is not bright. As one observer had occasion to note, "It is prudent to realize the limits of consultative procedures . . . [for] they do not provide any means of reconciling interests which are incompatible."

A CLEAR AND PRESENT DANGER

Notwithstanding the benefits derived from meetings of First Ministers it seems to Alberta that the one thing we have not had is a Constitutional Conference. Perhaps this is because we never really started a Constitutional Conference. We backed into it because of the crisis atmosphere of 1967 and then, it seems, we backed out of it once the crisis was no longer uppermost in our minds. But this should not really surprise us. Surely it is logical that if a government leader is faced with a choice between the break-up of the union and the resolution of a wheat marketing problem he is going to devote all of his energies to resolving the crisis which confronts the nation and avert its dissolution. If, on the other hand, national disintegration is not imminent, efforts will be channelled in other directions. Perhaps what we are saying is that the major barrier to a new

Constitution in Canada, or a major revision of the existing one, is the absence of a compelling reason for such a change. History tells us that Constitutions are not made in an environment which exists in Canada today. The majority of Canadians are happy and prosperous. There is no power vacuum -- no fear -- revolt is not in the air. There is no "clear and present" danger. The present Constitution has allowed the country to progress and to be governed ever since it was assumed nearly three years ago that there was something wrong with our Constitution.

The very word federalism implies consultation and we see meetings of First Ministers as a necessary incident to our system of government. Televised summit conferences perform a valuable educative function but televised conferences of First Ministers with no fixed timetable and no agreement on goals and objectives and extended over a long period of time do not a Constitution make. Moreover, we do not believe the people of Canada are cognizant of any progress in that direction or that they are particularly anxious to have a new Constitution.

PRAGMATIC RESPONSES

What the Government of Alberta, then, has concluded after close examination of the process of Constitutional review is that the level of agreement necessary for significant comprehensive revision or re-writing of the Constitution is not attainable at this time. It is recognized that a dynamic federal union such as we have in Canada with a high degree of interdependence between the component parts requires continual adjustments in governmental powers. It is Alberta's view that these adjustments should be made, and can most effectively be made, by pragmatic responses through the procedures and institutions which collectively make up the process we know as co-operative federalism. By adjustments in governmental powers we refer not only to collaborative political changes but also to Constitutional changes. Alberta is not opposed to Constitutional change. We believe there are several areas of our present Constitution which could be usefully revised, up-dated and changed. For example, the British North America Act could be up-dated to reflect the reality of the position of the Crown and to recognize political parties, the Prime Minister

and our cabinet system of government. We could probably reach agreement to drop its obsolete sections such as the disallowance power, improve its literary qualities and give recognition to Canada's status as an independent nation in the world. But we also believe such changes ought to be accomplished on a pragmatic and piecemeal basis.

AN EFFECTIVE RELATIONSHIP

We have previously referred to that vast network of intergovernmental machinery which presently exists and which we believe should be pulled together to make the machinery of consultation capable of producing constant and clear communication. We therefore urge all governments to give serious consideration to the machinery of intergovernmental liaison designed to co-ordinate and extract from the existing machinery maximum benefits. Let us be clear on this point: Alberta is not taking a position which relies solely on the machinery of intergovernmental liaison as a basis for a workable federal-provincial relationship. We must continue to strive for the development of a Constitutional structure which will meet the needs and aspirations of both orders of government. But

our experience has shown that this takes time and is even perhaps unattainable. This must not, however, stand in the way of an effective relationship to perform the practical job of harmonizing and rationalizing the responsibilities and functions within our present Constitutional framework.

Could it also be that by providing the machinery to make our present system work more efficiently, we will be in a better position to bring about those Constitutional revisions of which we have been talking for so long?

THREE STEPS

After studying the process of Constitutional review, and reviewing the proceedings carefully, I have reached the conclusion that there are a number of steps we can take to increase the likelihood that our efforts will ultimately yield visible and concrete results, either in the form of substantive amendments to our present Constitution or, at a minimum, in the form of acceptable procedures to accommodate future changes.

1. The first step I have already talked about at some length, that is the necessity to differentiate between the day-to-day problems and the Constitutional problems, and to pursue simultaneously solutions to both sets of problems. Criteria which permit a distinct and consistent dichotomization between Constitutional and day-to-day problems are not easily obtained, but I am confident that we can divide the problems which confront us into on-going and immediate problems during one of our working sessions and achieve sufficient agreement to begin the task at hand. As we go along, we may want to revise the initial division, but this can be accomplished without a great deal of difficulty. The important thing is that we will be making some headway.

PRIMARY AND SECONDARY

2. The second step might be to divide further those problems which we have agreed are Constitutional. Let us think in terms of distinguishing between, arbitrarily if necessary, the primary and secondary subjects. We can think of the primary subjects as those which are fundamental Constitutional propositions, such as fundamental

rights, official languages and amending procedures, and secondary subjects as those which are in some sense secondary Constitutional propositions, such as regional disparities, the distribution of powers and federal institutions. By dividing these problems on the basis of their immediate Constitutional import, we can concern ourselves with only the most basic issues and exclude that which is not central to the problem. Furthermore, one could argue that our efforts to come to grips with such specific subjects as fundamental rights or official languages would produce the basis for agreement in other areas. Once we get down to discussing the specific terms of agreement on a particular subject I think we will find, as in part we have already found, that the same types of questions and issues arise, so that if we can achieve agreement on one subject, there is an excellent probability that the agreement will be to a significant extent generalizable. If we can reach agreement on several different types of problems, then, I feel certain we will find, as the Prime Minister has suggested elsewhere, that things will somehow fit together -- we will find solutions to our Constitutional problems.

A MAJOR OBSTACLE

This particular problem has been a major obstacle to Constitutional reform. The federal government has maintained that the entire range of subjects should be discussed before we sit down to the bargaining table to negotiate the specific terms of agreement on individual subjects. The assumption was that this approach would enable us to work out our differences later -- the over-view would militate for consensus. However, there are two problems with such a viewpoint. First, the approach miscalculates the extent to which an appreciation of the complexity of federal interaction can serve as an integrating force. The question becomes: Now that we have a clearer understanding of federal interaction and the way in which the various problems we have been discussing inter-relate as they impinge upon the Constitutional framework, does this knowledge in itself bring us closer to agreement? And the answer has to be "no". If we are at all affected by a greater understanding of the federal processes it is negatively; now that we see more clearly that any adjustment we make to the Constitutional framework can have far reaching implications -- implications

which we cannot fully explore -- we are more reluctant to tamper with the Constitution than we might have been initially. Moreover, instead of bringing us closer to a consensus, as extended discussions might be expected to do, we appear to be growing apart. The flexibility, the apparent willingness to compromise which characterized our earlier discussions have given way to a tendency toward polarization. The unfortunate part of this is that the polarization which has apparently taken place occurs along largely predictable lines; the position a particular government takes on any question is usually a function of either its traditional relationship to the federal government or its physical characteristics, including such things as size, population, wealth and resources.

FUNDAMENTAL FLAW

The second problem seems to me to be a more fundamental flaw in our approach. We have agreed to discuss the full range of Constitutional issues; anything that even remotely touches upon Constitutional matters is, according to the mandate we have agreed upon, an acceptable topic for discussion. More recently we have

attempted to separate day-to-day problems from Constitutional problems and to limit discussions of the former to one day at the conclusion of each conference. Yet the fact remains that as these discussions proceeded, the number and range of issues which came to be included increased exponentially. We began with an agenda consisting of seven categories which were sufficiently general to permit the incorporation of almost any subject. Instead of trying to resolve the fundamental issues each category raised, however, we have delved into secondary aspects, with the result that more and more items appear on our agenda. In effect, we are attempting to put a roof on the house before laying the foundation.

LOGICAL POSSIBILITIES

The distribution of powers seems to be the catch-all category which facilitates the incorporation of an increasingly large number of topics into the discussion on Constitutional reform. For example, each of the agenda items we have the Continuing Committee of Officials currently examining either emanates from or relates to the division of powers. More importantly, however, several of these

agenda items are what could be classified as day-to-day problems; examples being environmental management, aspects of economic growth and capital markets. I am certain no one will question the desirability -- should the need arise -- of bringing these subjects into the Constitutional arena for discussion. My point is that so long as we continue to take an open-ended approach to Constitutional review, the number of logical possibilities we have with respect to range of subjects we could discuss makes the likelihood of agreement at some future point extremely remote. There are, in other words, no finite limits on the number of topics or amount of discussion necessary to reconstruct a Constitution. Even the experience other nations have had with Constitution building is not particularly instructive, for none have attempted to write or rewrite a Constitution in circumstances similar to those we are dealing with, i.e., in the absence of the kind of crisis which makes a radical change necessary, such as political deadlock, civil war or revolution.

TENTATIVE AGREEMENT

It may be argued with some force that while we continue our review of the Constitution new problems, many

with Constitutional implications, will emerge and require study and negotiation before a determination is made with respect to how best they can be disposed of in the Constitutional context. If we continue to try and come to grips with each new problem which arises -- as we have been doing -- then one could argue Constitutional review will still be underway when this decade draws to a close, a prospect I am certain none of us finds very enchanting. Finally, we must also face the danger that any tentative agreement we reach may be destroyed later on by our inability to resolve some new problem. The cases are legion where a relatively minor disagreement over loose ends completely negated the results of difficult and drawn out negotiations.

AN AMENDING PROCEDURE

3. The third step we might take, which is in part another method of addressing the problem raised above, involves establishing as one of our first priorities the search for an acceptable amending procedure. Notwithstanding the balances we strike between the central and regional governments along the several dimensions enumerated earlier,

we will be called upon to provide some mechanism by which changes are to be accommodated. The significant advantage in taking up the quest for an amending formula at this point lies in the fact that it enables us to focus in on the moving parts of the Constitution -- the principles which guide the changes time makes necessary. I do not for a moment suggest that arriving at an acceptable amending formula will be an easy task. But I am prepared to argue that the effort would be worthwhile, for if we can agree on how we will deal with change then it seems to me that we could go on to effect those changes we feel are necessary and desirable.

There are several reasons why I believe now would be an appropriate time to initiate new efforts to create an amending formula. First, our experience with Constitutional review has forcefully made the point that some method of making decisions on questions which involve federal problems is a necessary, even integral part of the Constitution. In the two years plus that we have been conducting a review of the Constitution, we have seen a number of important problems emerge which have Constitutional implications. As indicated earlier, these problems will have to be studied

and their resolution will require negotiation before a Constitutional disposition is agreed upon. As each problem will require time and effort to resolve, we cannot expect to deal with all our outstanding differences while the current review is under way. It follows, therefore, that some standardized method of resolving problems between the two orders of government must be established. The present amending procedure, as we are all aware, is far too rigid and places an intolerable burden on federal-provincial relations.

Second, the most recent negotiations on an amending formula -- excluding those which during the review process indirectly addressed the question -- indicate, quite explicitly, that the degree of disagreement with respect to what constitutes an acceptable formula is not great, and certainly not irreconcilable. The fact that we were close to agreement cannot be, of course, interpreted as an indication that agreement will be forthcoming. Nevertheless, the proximity to agreement which was achieved during negotiations on the Fulton-Favreau Formula strongly support a renewed effort. Now that we see more clearly the interrelationship between various

parts of the Constitution, it is difficult to conceive of any rationale for postponing the search for a solution to this problem.

Let me conclude by saying that Alberta does not want to see Constitutional discussions discontinued if we can, through a re-orientation, increase the likelihood that future conferences will be productive. Any of the possibilities I have suggested -- return to fundamentals, dichotomize between Constitutional and day-to-day problems, or focus on the mechanisms of change -- would, I feel certain, improve the prospects that meaningful changes could be brought about and that Constitutional reform could be termed successful.

ENVIRONMENTAL MANAGEMENT

AND

POLLUTION CONTROL

PART I

Pollution control and ecological management have been serious problems in Canada for several decades, although it was not until very recently that they became the focus of public policy on a national scale. Over the past year the media across Canada has made a concerted effort to inform the public on the pollution situation. This information has enabled the average Canadian to become more fully aware of the dangers the various types of pollution pose, and has led to demands to curb existing pollution and prevent new occurrences.

As an area of public policy, pollution control and environmental management raise two important jurisdictional questions -- Which government has responsibility? Which government, given the difficulty of administration and regulation that pollution problems pose, should have jurisdiction?

At the Federal-Provincial Conference of February, 1970 and the Continuing Committee of Officials meeting of June 1970, government members indicated an awareness that legislation is required to enforce pollution control regulations. However, a complex jurisdictional problem is

obstructing action. Opinion is divided on whether or not solutions to jurisdictional complications can be found within the framework of the present Constitution.

In order to determine the best way to administer environmental management regulations, whether the federal, provincial or municipal order of government offers the best solution or whether a combination of the above orders working in close consultation would be preferable, one must study the advantages and disadvantages of any one order having exclusive control in this area.

MUNICIPAL INVOLVEMENT IN ENVIRONMENTAL MANAGEMENT

Municipal government participation in environment management is both desirable and necessary. There is not any one particular type of pollution -- it comes in a multiplicity of forms and ranges in scope from the local to the international. The urban municipality is most intimately involved with pollution problems peculiar to areas of high industrial development and heavy population concentration. Pollution associated with industrialization and technological developments, housing (sewage facilities,

etc.), transportation (automobile exhaust emissions, etc.), and wilderness areas (located near the city) will continue to be of concern to urban municipal governments. Rural municipalities on the other hand, will continue to be most concerned with pollution problems connected with agriculture, mining and forestry.

It was predicted in the Report of the Royal Commission on Canada's Economic Prospects that by 1980 probably only nine per cent of the population will reside on farms in rural areas and that more than half the population will reside in metropolitan areas of over 100,000. These figures by themselves indicate the need for full participation by municipal governments in the processes of consultation on environmental management.

An additional reason for municipal involvement in this field is that co-operation from persons and industries responsible for pollution will accrue from influence and pressure being brought to bear not only by municipal ordinances but also by local citizens, district councillors, administrators and newspapers. Since the problems of growth are within striking distance of local officials,

the chances that they will be attempting to come to grips with these are excellent. These factors together indicate that the co-operation of the municipal governments in the planning and execution of community programs is necessary to ensure their success.

Local government involvement, although mandatory, is not sufficient. Municipal governments, for example, would not see the advantage to be gained in undertaking heavy investments for pollution abatement if neighbouring municipalities, using the same air and water, do not implement complementary programs. Moreover, even if the municipality went ahead with the programs its tax base would not be adequate to withstand a substantial increase in municipal debt. And finally, expanding municipalities seeking industrial investment and development would hesitate to enforce pollution control by-laws or to impose fines on negligent industries in the face of the very real danger industries would locate elsewhere.

Eric Beecroft in his paper "The Municipality's Role in the Control of Water Pollution" outlines some of

the main problems municipalities encounter:

Capital works programs of such technical command often involving large borrowing cannot be prepared by municipalities without

- (a) a comprehensive long-term capital works budget;
- (b) co-operation on such budget planning with their neighbouring municipalities through regional councils having a view of the entire community and its needs for public services;
- (c) adequate trained staff to prepare technical and financial programs;
- (d) analysis of the economic base on which the municipalities of the region are dependent for continued revenue;
- (e) well co-ordinated administration, to facilitate a close relationship between those responsible for the planning of all physical development.

A single municipality has neither the jurisdictional authority nor the financial foundation necessary to implement the pollution control programs which will be required in the immediate future. This statement by no means implies that the municipality does not have a vital function to fulfil. All orders of government must participate in pollution abatement, to place complete or prime responsibility in the hands of local governments would be unrealistic.

PROVINCIAL INVOLVEMENT IN ENVIRONMENTAL MANAGEMENT

Provincial government jurisdiction over environmental management would overcome some of the limitations of municipal government control. Provincial legislation could be enacted requiring the implementation of complementary programs by contiguous cities, towns or villages and thus eliminate the tendency for one municipality to neglect pollution control measures because an adjoining municipality was ignoring them.

A provincial government, being responsible for a much more extensive area than a municipal government, would be much more likely to enforce stringent pollution control regulations on industries. Furthermore, provincial efforts to introduce environmental management programs would be of sufficient scope to recognize the interdependence between quality and quantity, to consider alternative solutions instead of being forced into accepting a single and sometimes inferior solution, to evaluate the multi-purpose use to which resources can be put.

Although costs would be distributed on the basis of benefits in accordance with the provincial policy that "the polluter must pay", large scale provincial planning could eliminate many duplication costs, thus lessening the financial burden vis-a-vis the municipality. The provinces are better equipped -- in terms of fiscal resources -- to carry out investigations and to assess and approve plans and specifications for new industrial developments.

M. Katz, author of "Regional Air Pollution Control" indicated that the logical base for air pollution control is regional "since the dispersion of pollutants is governed by regional topography and meteorological processes . . ."

He argues:

Contaminants from large industrial installations are discharged usually at high temperatures from tall stacks to assist dilution and dispersion of the waste products. Although this practice is beneficial to the immediate neighbourhood it may result in moving the zone of maximum concentration to distances of more than 5 to 10 miles from the source. Gaseous contaminants, such as sulphur dioxide from large sources have been known to cause damage to vegetation at distances up to 40 miles.

According to the division of powers outlined in the British North America Act, the province has broad authority in the area of environmental management under such sections of the Act as 92(13), property and civil rights; 92(5), management and sale of public lands; 92(16), local and private matters; and 92(10), local works and undertakings. Dr. Gibson in "Constitutional Jurisdiction Over Environmental Management in Canada" has shown how these jurisdictional powers pertain to Wildlife and Fish, Agriculture, Land Reclamation and Abandonment, Weather Forecasting and Weather Modification, Recreation and Leisure Activities, Transportation, Electric Power, Multiple Use Water Management, Housing and Urban Planning, Noise Abatement, Visual Pollution and Resource Pollution.

In actual practice, the provincial governments have been the main bodies responsible for the regulation and control of pollution. Alberta, for example, has had water and air pollution control programs in operation since 1950 and 1957, respectively. In both areas, Alberta's record is unmatched elsewhere in Canada.

Other provinces also have been responsible for most of the pollution programs now in operation. Ontario experimented with municipal control over air pollution control but after nine years, during which time only four municipalities took any initiative in the matter, the province enacted new legislation placing responsibility for air pollution control under the provincial government.

Additional advantages to a provincial or regional approach are that the exchange of experience and information between regions would be facilitated, common principles would be applied to areas with common characteristics, industries would have a framework for location and planning decisions, and municipalities would not be in competition and yet would retain the right to add supplementary regulations within their jurisdiction.

Other problems emanate from the organizational and administrative choices made. If pollution solutions are to be considered in a provincial context, are other orders of government to participate in the decision-making process? If so, what is the extent of their involvement?

If the regional approach and provincial government control are not synonymous then what body shall have control? How are regions to be defined? By provinces? By natural geographic boundaries? If regional planning is to take into consideration town planning, economics, sociology, land ecology, as well as other factors, then what body, agency or board will be required to co-ordinate the whole? How would a regional control body be funded? Would planning and implementation be undertaken by the same agency?

In part, of course, these questions will have to be determined by the nature of the problem; different types of pollution will require different approaches, administrative and regulatory arrangements and different solutions. Before a jurisdictional disposition is agreed upon, these questions will require workable answers.

FEDERAL INVOLVEMENT IN ENVIRONMENTAL MANAGEMENT

Federal government control over environmental management could eliminate many of the disadvantages of provincial control. Inter-regional competition would be

greatly diminished because one government would be setting the standards for all. Questions as to the definition of a region would not be as relevant. The federal government, even in a provincial control situation, would govern the northern regions so federal control over the whole of Canada might make a more unified and comprehensive effort.

The federal government is already party to all pollution matters on an international and inter-provincial scale. It could be argued that making it party to all pollution disputes would be a logical extension of its jurisdiction in this field.

The federal government would be the one best equipped to provide for the conduct of research into certain areas of pollution significance, i.e., basic science aspects, accumulative and toxic characteristics of certain wastes, specific difficult wastes, the transportation of toxic and hazardous substances, the analytical detection and monitoring of certain difficult pollutants.

Moreover, as the federal government has jurisdiction over international trade, it will continue to play an important role in the control of marketing excessively hazardous materials.

Federal control over environmental management, like that of the provincial governments and municipalities, has its drawbacks. Federal control is "remote control", lacking the close communication and co-operation at the local level which municipal and even provincial involvement encourages.

Any environmental management programs will necessarily involve certain social values and economic priorities. With federal control over the field there would always be the danger that the social and economic values of one section of the country would be imposed on the whole of the country. To be effective pollution abatement measures must have the co-operation of all regions of the country -- a policy which was prejudiced in favour of one section of the country would not have this support.

In conclusion, then, the problem is not which order of government should have control and jurisdiction over pollution abatement and environment management, but rather what combination of governments is most appropriate.

ENVIRONMENTAL MANAGEMENT

AND

POLLUTION CONTROL

PART II

- A PROPOSAL -

INTERGOVERNMENTAL FORUM

The Government of Alberta, in keeping with its support of the Canadian Council of Resource Ministers' recommendation that an intergovernmental forum on pollution control be developed to facilitate the exchange of information and to review problems, recommends that this body be established at the earliest possible date.

AREA OF JURISDICTION

Federal and Provincial Governments should contribute in the development of effective programs by combining their efforts on joint or common problem areas. Some of these common areas may be itemized as follows:

1. Environmental quality standards that would provide for:
 - (a) safety to people
 - (b) freedom from nuisance type of conditions
 - (c) the production of safe food for people
 - (d) freedom from adverse effects on vegetation and wildlife

- (e) freedom from excessive corrosion of buildings and construction material.
- 2. Assessment of progressive or cumulative adverse effects on people, their food supply, and natural biota, of such substances as mercury, D.D.T., lead, pesticides.
- 3. Methods of assessing the magnitude of pollution problems from particular industries, e.g. pulp and paper mills, chlor-alkali plants, steel mills and metal salvage processors. Similarly methods of assessing the effectiveness of available pollution control facilities or techniques should be established.
- 4. The accuracy and sensitivity limits of available analytical methods for the detection and measurement of contaminants, particularly those that are significant at trace quantity levels, e.g., mercury and D.D.T.
- 5. Education and "practical" training of pollution control workers, including "post" university or technical school education.
- 6. Development of effective methods of accomplishing or achieving pollution control in cases where current methods or techniques are either not sufficient

or are not reliable. (For example, colour and odor removal from sulfate pulp mill waste waters or the disposal of stripped car bodies, hazardous or toxic liquids, etc.)

7. Development and co-ordination of research work at universities, research centres, governmental and municipal facilities with special emphasis being placed on continued or progressive programs on single subjects.
8. Financial incentives and enforcement methods.

ORGANIZATIONAL FRAMEWORK

We would suggest that the proposed intergovernmental forum to operate most efficiently should be composed of three bodies: Federal-Provincial Government Members, permanent staff and research groups.

A. Federal-Provincial Members

Composition: This body should be composed of federal and provincial government members only.

This restriction of membership would facilitate co-ordination and co-operation and would expedite the problem-solving processes. Submissions by industries or other interested parties could be made either directly to the Canadian Council of Resource Ministers or through federal or provincial governments via federal-provincial members committee.

Function: The federal-provincial members should be, to some extent, involved in policy formation and decision-making activities. The precise terms of reference which were agreed upon by the federal and provincial governments would have to set out the extent to which this body would function in this capacity. This body would launch research studies, obtain personnel through the permanent staff and evaluate the results of these studies. It would also be responsible for co-ordinating the activities of other research groups working in the area of

environmental management and pollution control.

Recommendations which required legislation or expenditure of funds or government staff or facilities would require the approval of each government involved at the Executive Council or Ministerial level. It would be the responsibility of federal-provincial government members to make sure that recommendations are considered by the individual governments involved.

B. Permanent Staff

Composition: This staff should consist of at least one full-time government person from each of the eleven governments participating in the forum.

Function: This body would be responsible for administrative duties -- its function would be similar to that of a secretariat. It

would also be in the best position for allotting research assignments as it would have a broader perspective of research requirements. This staff would permit the work of the intergovernmental forum to be done on a continuing rather than a sporadic basis.

C. Research Groups (Task Forces)

Composition: Task forces created to examine specific or general problems could be composed of resource personnel from government, universities and non-governmental organizations.

Function: This body would be responsible for research activities. For example, one task force, when assigned a particular research project, would be responsible for identifying alternative solutions that meet the objectives set out by the intergovernmental forum. The task force would evaluate the alternatives, having regard for technical, physical and economic

factors, and recommend the most appropriate solution in the given circumstances. It would then forward its recommendation to the permanent staff which in turn would be responsible for ensuring that the report was given to federal-provincial government members.

C. Booy in "Institutional Arrangements Related to the Planning of Water Resource Developments" indicates the complexity of arriving at viable solutions to this kind of problem. He suggests:

Planning is not a straight forward procedure. The objectives are given at the outset in terms that, as a rule are general and sweeping, rather than specific and detailed. During the planning process, however, possibilities and implications become more clearly delineated, bringing the objectives into sharper focus. The result is often a revision of the objectives. It is also seldom possible to determine in advance exactly what information must be collected to properly identify the alternatives. Furthermore, values can seldom be judged adequately in the abstract; they are given their proper weight in the concrete situation.

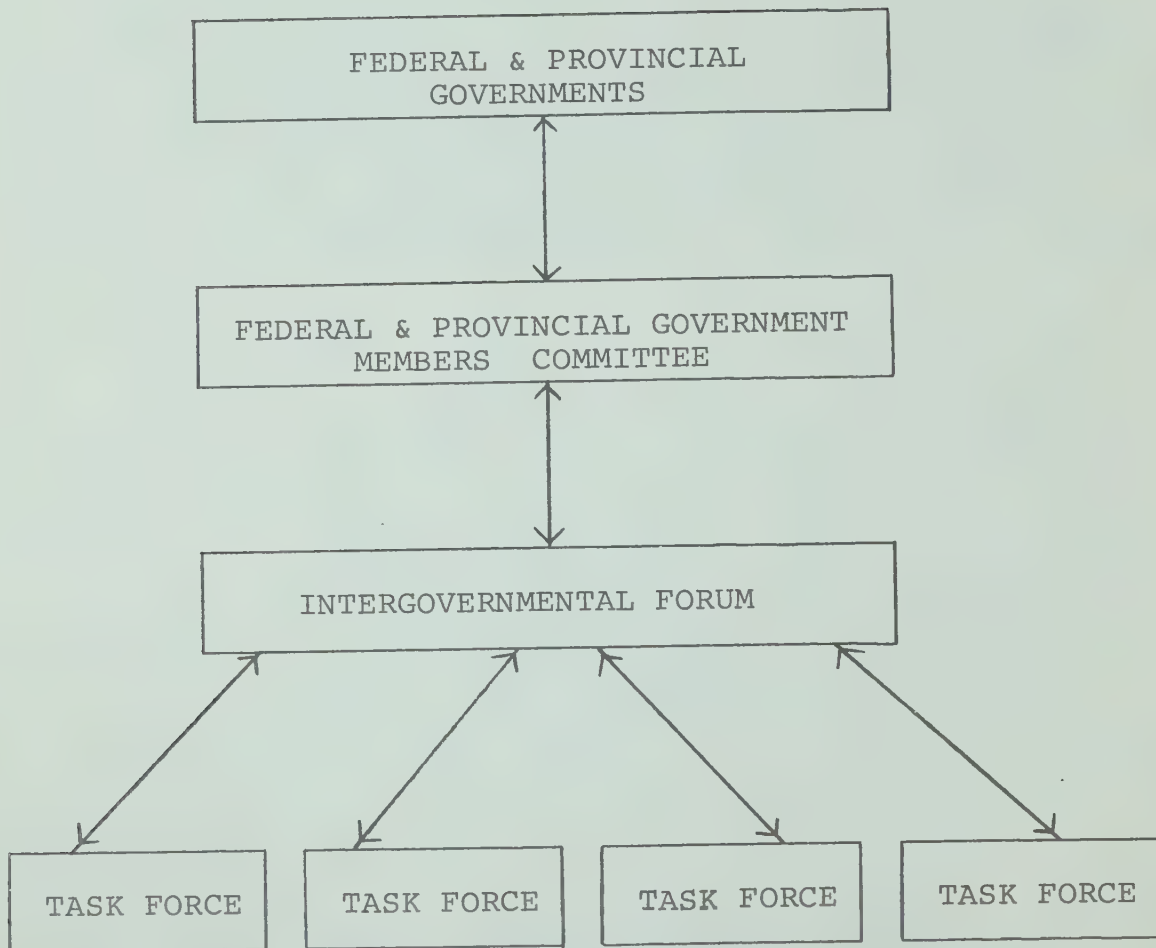
Since "successive cycles of approximation, starting with a quick survey of possibilities and ending with detailed comparative analysis" will be required in the interval between task assignment and task completion, it will be essential to have close co-ordination and frequent communication between the task force or research group and the policy makers. Federal-provincial government members will depend on the task forces to provide them with all information required to formulate realistic criteria and objectives.

Assigning separate task forces to each area of research would maximize efficiency and accountability. The individual research group will be chosen on the basis of its expertise and competence in the area under consideration. Moreover, each group will only be responsible for one research project at any particular time and will be required to keep the permanent staff informed on the progress which is being made.

In order to determine the most appropriate solution to a given problem the research group must

have lines of communication and co-ordination with all pertinent areas. This liaison may be temporary or permanent; it may involve only consultation or actual participation. A great deal of confusion and inefficiency could be avoided if each government followed the "single agency" approach to environmental management. This approach has been adopted by Alberta where The Environment Conservation Act provides for increased co-ordination and unification of pollution control work between the various departments.

STRUCTURAL LINKAGES



The foregoing diagram illustrates possible communications and responsibility linkages between the various parts of the proposed intergovernmental forum.

FINANCIAL ARRANGEMENTS

1. Joint financing of office and staff, etc.
for a full-time headquarters staff:

Federal Government - 50%
Provincial Governments - 50% (pro rated on the
basis of population)
2. Individual governments for salaries, travel
expenses, for federal-provincial government
members and permanent staff members.
3. Research projects initiated by the intergovern-
mental forum would be funded on the same basis
as 1.

THE PROBLEMS
OF
URBAN GOVERNMENT

Municipal governments are finding it increasingly difficult to carry out their responsibilities. It is suggested by the municipalities themselves, through such bodies as the Canadian Federation of Mayors and Municipalities that the problems are these:

1. Inadequate revenue:

- (a) the property tax which constitutes the major revenue source for municipalities is not adequate for financing municipal programs;
- (b) not enough funds are given to municipalities by the federal and provincial governments which, it can be argued, have received much of their revenue from incomes and activities made possible by municipal programs in the first place;
- (c) the rapid growth of social services, traditionally the responsibility of

municipalities, exacerbates the situation;

- (d) the per capita costs of utilities and amenities tends to grow with increasing city population.

2. Inadequate control:

- (a) funds from provincial and federal governments are rarely given unconditionally, except in the form of guaranteed loans or grants in lieu of property taxes;
- (b) the federal and provincial governments frequently make decisions seriously affecting municipalities without consultation with the municipalities: in locating airports, designating areas for industrial incentives, establishment of educational institutions, etc.;

- (c) the problem of inadequate control can also exist in the form of too many municipalities in the same functional urban area, or in the same rural region.

Two other secondary problems stem from these major problems.

3. Inadequate management:

- (a) some municipalities are too small to support a government large enough and sophisticated enough to carry out the responsibilities given it; or, conversely, some municipalities are too big to develop adequate management with the funds available and with structures which always seem to be outmoded.

4. Inadequate knowledge:

- (a) the amount of research devoted to solving municipal -- particularly urban -- problems is miniscule compared to the research devoted to industrial development or agricultural research, etc.;
- (b) the research that is conducted is often of limited utility to municipalities other than those specifically studied;
- (c) results of research conducted in one centre are rarely communicated to other centres, and for that matter, within a centre one hand often knows not what the other hands do;
- (d) funds available to municipalities to conduct research are much more limited than they are to provincial and federal governments.

Understandably, the municipalities are asking for radical solutions to these problems. Short term solutions such as senior governments offering grants for an increasing range of municipal activities, ad hoc consultations, or research help on immediate problems, are not satisfactory from anyone's point of view. The increasing assumption of traditional municipal responsibilities by provincial governments and even the federal government may seem to partly solve the financial problems, but this "solution" leads to a worsening of the problem of inadequate municipal control and reduces the advantages of local government. Understandably, the municipalities are not keen on any solution which reduces their autonomy.

The municipalities tend to see the proper solution to their problems lying in a redrafted Constitution which, presumably, would on the one hand, guarantee their existence and responsibilities, and on the other, guarantee them adequate sources of income. The Alberta government has given this suggestion careful consideration and recognizes its merit. However, we have concluded that municipal participation in

redrafting the Constitution is not the best means to solve municipal problems.

First, as we have suggested elsewhere, the present process of Constitutional review is not meeting the expectations of the participants. The addition of municipal representatives to the present structures would make matters all the more difficult. It is our firm belief that the process of Constitutional review must be continued as a dialogue among present parties: the provincial and federal governments.

Second, the increasing functional interdependence of municipalities provides better reason than ever for municipalities -- including the large cities -- to be treated as creations of the provinces. Most municipal problems can be adequately dealt with within the present framework of provincial responsibilities.

Where, however, there is a recognized need for federal help in solving municipal problems, there should be discussion among the municipalities, the provinces in which the municipalities are located, and the Government of Canada.

Alberta is pleased with the step taken in this direction by the Conference of Ministers and Deputy Ministers of Municipal Affairs at Winnipeg, August 16 - 20, of this year. It was agreed there that a meeting including both provincial and municipal representatives should be held to act as a planning committee for a possible tri-level meeting among the federal government, the provinces and municipalities. The planning committee is to consist of the Ministers of Municipal Affairs, one representative of the Canadian Federation of Mayors and Municipalities, and one municipal representative from each province.

We are confident that such a tri-level meeting will prove useful, and that it will mark the beginning of a series of tri-level consultations on municipal problems. We believe that such consultations -- whether continued in an ad hoc or structured manner -- will be more fruitful than any direct involvement of the municipalities in redrafting the Constitution.

In keeping, then, with our general recommendation that discussions proceed outside the Constitutional arena as a series of negotiations on particular issues as they come up, we are anxious to have deliberations begin on municipal problems -- one of the most pressing issues today.

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(A) Position paper

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